Case Study - IndiaKanoon

As part of the *Free Access to Law – Is it Here to Stay* project

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Introduction

1. Preamble

Sometime in early 2008, Sushant Sinha, an Indian computer science doctoral candidate from Michigan University began offering free access to decisions of the Indian Supreme Court via his website IndianKanoon.org (IK)[1]. In the ensuing two years, IK has grown exponentially and has become one of the most popular websites for accessing Indian legal materials, hosting over 1.2 million documents at the time of this writing. This paper is styled as a 'case study' that probes the IndianKanoon story – its genesis, successes and impacts - in some detail.

This is also a paper that interrogates the conditions that make a site like IndianKanoon possible. It seeks an answer to the question: Viewed from what frame do the actions of one man unilaterally deciding to host over a million legal documents online for free become *sensible*?

2. Free Access to Law in India

Dissemination of law performs at least two key functions in the maintenance of a polity. On the one hand it is essential to the creation and quotidian reproduction of cultures of legalism in any country.[2] Secondly, in the hands of citizens, knowledge of the law provides, at least theoretically, a shield against official arbitrariness and high-handedness.

Since Independence in 1947, India has taken long strides towards achieving an environment of access to information including legal information. The Supreme Court has periodically affirmed both the individual rights to know (in cases where persons are the targets of administrative action) as well as a more general right to information of citizens. In 2005, with the passage of the Right to Information Act, a more permanent

[1] Literally 'IndianKanoon' translates as 'IndianLaw'.

[2] This is observable historically, for instance, in the tremendous influence that the publication of Blackstone's four-volume 'Commentaries on the Laws of England' had in the propagation of the common law throughout the British empire. Published in the mid 18th century, contemporaneous to the consolidation of the British colonial enterprise, the Commentaries provided a hitherto unavailable, concise, and crucially portable compendium of common law precepts at a time when "records of decisions were incomplete and sporadic; and few attorneys could afford a comprehensive law library." The handy Commentaries replaced the various, voluminous and disaggregated law reports as a source of legal authority and have been cited by courts frequently in the determination of cases. Here the *Commentaries* enabled a wider dispersal of the culture of legalism that would have obtained otherwise had law reports been the only vehicle of dissemination.

and systematic architecture of making available governmental information was installed which has heralded an era of unprecedented transparency and accountability.

Over the past two decades India has also been fortunate to have installed a robust ICT infrastructure. Government bodies at various levels have websites which provide access to varying amounts of information. The Higher Judiciary in India has been amongst the more enthusiastic adopters of ICT with the judgments and orders of various High Courts and the Supreme Court being published for free almost instantly on the internet. Although the websites tend to be decentralized in their administration, a vibrant ecology of Indian governmental information exists on the internet which has been built up over the last decade or so.

It is within this context of an enabling policy environment and open and robust ICT practices by the government that this paper seeks to locate the success of IndianKanoon. In subsequent chapters, both these elements will be explored in greater detail.

3. Institutional Context of this Paper

This paper is conceived as a part of a broader study that examines "Free Access to Law" projects in different parts of the world. The study aims to research "what free access to law projects do and how they do it best so as to understand the positive effects they have on society, their target audiences and stakeholders, and explore the factors determining their sustainability."

Funded by grants from the International Development Research Centre (IDRC) and the Open Society Institute (OSI), the research for various components of this study is being conducted jointly by LexUM of the University of Montreal (Canada) and the Southern African Legal Information Institute (SAFLII) in collaboration with the Centre for Internet and Society (CIS, India).

The present paper continues the CIS' ongoing research commitment to 'understanding the shape and form of the internet, and its relationship with the political, cultural, and social milieu of our times'. (About Us — Centre for Internet and Society, 2010)

4. Context-setting within the 'Free Access to Law Movement'

For the purposes of this study, the term 'Free Access to Law Movement' (FAL movement) refers to the promoters of an acclaimed set of websites that have, since the early 1990s, been offering free access to law in different jurisdictions. This[3] FAL

[3] Throughout this paper, I use the pronoun 'this' to qualify the LII-initiated Free Access to Law Movement. I do this as a concession to the manifold other "offline" Free Access to Law Movements – whether they designate themselves as such or not - that have borne the torch of transparency in myriad contexts and countries. The Right to Information Act that was enacted in India in 2005 marked the culmination of a nearly two decade long grassroots struggle for transparency initiated by the Farm Workers Union (Mazdoor Kisan Shakti Sangathan) in the state

movement typically traces its genesis to Cornell's Legal Information Institute (LII), which has, since 1992, been publishing “legislation, court decisions and other legal documents, online available to anyone with Internet access”. Cornell’s LII has in turn “inspired similar initiatives in Canada (CanLII) and Australia (AustLII), and elsewhere in the world.” In 2003, eight of these initiatives – LIIs – assembled in Montreal in order to articulate the visions and goals of this FAL Movement. Their efforts led to the production of the Montreal Declaration on Free Access to Law, today said to have more than 30 signatory projects. (Methodology Guide, February 2010)

The Montreal Declaration is framed inclusively and designates any site a Legal Information Institute which conforms to the following criteria:

- Publishes via the internet public legal information [4]originating from more than one public body;
- Provides free and anonymous public access to that information;
- Does not impede others from obtaining public legal information from its sources and publishing it; and
- Supports the objectives set out in this Declaration.

The Declaration holds “public legal information from all countries and international institutions” to be a “part of the common heritage of humanity”. Accordingly, the Declaration affirms, “Maximising access to this information promotes justice and the rule of law”. Further, it declares public legal information to be “digital common property” which “should be accessible to all on a non-profit basis and free of charge”. Lastly, it affirms the right of “Organisations such as legal information institutes” to “publish public legal information”, and exhorts all government bodies that create or control information to “provide access to it so that it can be published by other parties”.(Montreal Declaration on Free Access to Law, 2002)

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of Rajasthan in India. At its peak the MKSS movement harnessed the labours of many thousands of activists across the country and imperiled the lives of many. In India, the MKSS initiated movement – for its sheer size - is *the* Free Access to Law Movement to which all others can only be regarded as subsidiary.

[4] Public legal information is here defined as “legal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry. It also includes legal documents created as a result of public funding.”

In a narrow sense thus, the term ‘FAL Movement’ celebrates the co-ordinate efforts of a specific community of Legal Information Institutes that have been providing free access to legal information on the internet for nearly two decades.

In this context, the present study marks one of the first systematic research efforts by this FAL Movement to understand, with complexity, the conditions of its members’ existence. It responds to a concern that notwithstanding successes in achieving their project objectives, some FAL projects “have faced arduous realities and not all have been able to overcome the challenges met along the way”.

It is hoped that a study of free access to law projects in their diverse contexts could yield valuable lessons in sustainability for the movement as a whole.

The selection of IndianKanoon as the object of study in this paper might strike one as a bit unusual. Although IK meets the criterion of a ‘Legal Information Institutes’ as defined in the Montreal Declaration, the noun ‘Institute’ appears rather lofty as a descriptor of the activities that one man undertakes in his spare time. Furthermore, the congruence between IKs activities and the FAL Movement seem entirely fortuitous – neither seems to be aware of the other’s existence. However, what IK lacks in terms of organisational structure it makes up in sheer size of enterprise. While the IK story may not have many lessons to offer on organisational dynamics, I think there are important insights to be gained on how Free Access to Law works in India which could be of use to the movement as a whole. In this context, while the IndianKanoon story may not repay a quest for ideal organisational models, it does offer hope for the future of *any* free access to law project undertaken in India.

Research Methodology

As articulated in the Methodology Guide prepared exclusively for this study, the central question which informs this research is: “What determines the sustainability of operations of free access to law projects?”

The answer to this question is sought to be arrived at pursuant to a four pronged investigation into

1. The external factors impact on free access to law projects’ success and/or failure?

2. The practices that have been adopted by free access to law initiatives that have been successful and by those that have not?

3. The outcomes that are resulting from FAL projects?

4. Whether those outcomes are sufficient to create incentive among free access to law initiatives target audiences or stakeholders acting on their behalf to sustain free law publishing?

A general hypothesis has been formulated which this study is intended to test viz: that success, defined in this study as four-fold (internal, outputs, outcomes for users and societal outcomes), works hand-in-hand with sustainability: *if the Free Access to Law project is successful, it will have greater chances of being sustainable.* (emphasis mine)

Both extensive document review as well as the survey method were employed in the course of this study. Most of the information about IndianKanoon was obtained from its Project Manager through email correspondence, as well as in the course of an elaborate telephonic interview in March 2010. Supporting information such as site statistics were obtained subsequently from the Project Manager.

Given IndianKanoon’s lack of formal organisational setup, two ‘Primary Stakeholders’ were identified and interviewed in consultation with the Project Manager. These were persons who were regularly consulted by the Project Manager in an informal capacity about IndianKanoon, and who were invested in its continued existence. A third ‘stakeholder’, the Chief Librarian of the Supreme Court of India was interviewed in order to track broader environmental issues about Free Access to Law in India which are germane to IndianKanoon’s existence.

Identifying primary and secondary user groups from IP referrers proved impossible since the this data only yielded the names of the various ISPs from whom traffic had originated. It was not possible to extrapolate from this data, the names of the specific

client who was accessing the data. Consequently, the primary and secondary users had to be identified through other means.

Despite the Project Manager's categorical insistence that the site was intended to serve 'laypersons' only (Iyengar, 2010), I have identified Lawyers and Law students as the primary and secondary user categories respectively. The choice of lawyers as primary users is relatively uncontroversial given the Project Manager's surmise during the course of the interview that lawyers could be amongst the primary users of IndianKanoon. Law students were selected as the secondary category of users by drawing on the researcher's own experience as a provider of Free Access to law for nearly four years, as well as in consultation with the primary stakeholders identified.

Individual users were identified both amongst the researchers own personal contacts as well as through lateral referral from other users. Interviews were conducted in three cities – Bangalore, Delhi and Hyderabad during June-July 2010. A conscious attempt was made to make the pool both gender and region representative. Towards this latter end lawyers and law students from both rural and urban backgrounds were interviewed.

If there is one defect that the sample suffers from it in its not being appropriately age representative. A majority of persons interviewed were between the ages 30-40. While this has undeniably resulted in the loss of some valuable perspectives from those above this age group, some consolation can be gained from the fact that the group interviewed represents those who are poised to be the most influential consumers of legal information in the decades to come. The researcher has striven to ensure that the sample reflects the views of those users whose perspectives the Free Access to Law Movement would have reason to value.

Free Access to Law in India

Before proceeding to a full discussion of IndianKanoon, in this chapter I offer a brief appraisal of the current legal position on free access to 'public sector information' in India. Is there a statutory basis supporting a citizen's demand for free access to the law?

The right of the public to know about the affairs of the state in India has had to be gradually constructed by the Supreme Court as a constitutive element of the fundamental right to freedom of speech and expression enshrined in our Constitution. The right to information has been regarded as being of critical importance to ensuring transparency and accountability of governments. As Justice Matthew of the Supreme Court put it in one case:

> In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries.[5]

Today the public's right to access information stands on two pillars vis. the right to information and copyright law. I begin by addressing the question of whether laws need to be published in India before discussing each of these two regimes of information access.

1. Do laws need to be published?

The question can be posed in relation to two kinds of laws – *enacted* law including statutes, regulations and rules and other miscellaneous orders, and laws that are *declared* by the higher judiciary.[6] In this section, with respect to each kind of law, I propose to inquire whether there exists any legal mandate to publicize them.

2. Enactments

In India, whilst there is, as yet, no general statute directing central (federal) laws to be published[7] or made known to citizens, an assortment of Rules of Procedures and Speaker's Directions (which have been compiled into a "Manual of Parliamentary

[5] Union of India V. Raj Narain and Others AIR 1975 SC 865

[6] Article 141 of the Indian Constitution declares that "the law declared by the Supreme Court shall be
binding on all courts within the territory of India."

[7] One Indian legislation that approaches this field is the Authoritative Texts (Central Laws) Act of 1973 which stipulates that in order for a translation of any Act or rule to be regarded as an authoritative text, it must be "published under the authority of the President in the Official Gazette".

Procedures in the Government of India"[8]) direct that a Bill ought to be forwarded for publication by the Lok Sabha/Rajya Sabha secretariat for publication in the Gazette of India once it has been introduced in a house. Further, the Procedures direct that once a Bill receives Presidential assent and becomes an Act, the Ministry of Law and Justice (Legislative Department) must:

> (a) publish the Act in the Gazette of India Extraordinary;
>
> (b) forward copies of the Act to all State governments for publication in their official gazettes; and
>
> (c) get copies of the Act printed in a suitable form for sale to the general public.[9]

In addition, every statute (both central as well as state-level) typically stipulates in its cardinal section that it is to come into force only 'upon notification in the Official Gazette' by the appropriate Government.

Today, the responsibility for the publication of the Gazette of India is shared between the Department of Publications and the Directorate of Printing, both operating, curiously, under the aegis of the Ministry of Urban Development. From the various rules and regulations that govern Government Presses in India, it appears that their task is limited to executing print orders ('indents') as and when they receive them from various Government departments i.e. they are not charged with the positive obligation to publish laws, but rather act as contract-printers as and when the need arises. Even in this task, they do not seem to enjoy a monopoly, and various departments may prefer private printers to fill their orders as long as their spending conforms to a schedule of maximum allowable rates.[10]

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[8] Manual of Parliamentary Procedures in the Government of India, Ministry of Parliamentary Affairs and Urban Development, Government of India, 2004, New Delhi, <http://mpa.nic.in/Manual/Index.htm>. From the preface: "The first edition of the "Manual for Handling Parliamentary Work in Ministries" was brought out by the then Department of Personnel and Administrative Reforms in July 1973. Subsequently, in 1976, on its request of that department the work relating to the manual was transferred to the Ministry of Parliamentary Affairs. Keeping in view the various changes that had taken place in the Parliamentary Procedure and Practices, the manual was revised in consultation with the concerned Ministries and the second edition of the manual was brought out by the Ministry of Parliamentary Affairs in 1989."

[9] *Ibid,* Item 9.22 of the Procedures

[10] See Rules 32-34 of the Rules For Printing And Binding 1986, Directorate of Printing Ministry of Urban Developments, http://dop.gov.in/righttoinformation/append6.pdf

See also Revised Instructions Regading Printing And Distribution of the Various Parts of the Gazette of India which states in regard to Gazette notifications that instead of printing through the Government presses, the concerned department "can place cyclostyled copies of the Gazette in the Parliament and simultaneously they may send 15 cyclostyled copies of the Gazettee to the

So a search for a definite legislative mandate to make all laws accessible and known to the public in India yields poor results. By contrast, in the UK, by virtue of the Crown Office Act of 1877, His Majesty in Council is directed to carefully consider the best mode of making laws known to the public (other than publishing in the Gazette) and that body is empowered to draw up rules accordingly and embody them in an Order in Council.

In addition, the Statutory Instruments Act in 1946, made it mandatory for the government to take active steps to publish four kinds of delegated legislation viz. (a) rules, (b) regulations, (c) orders (including commencement orders and orders in council) and (d) bylaws. Where a person is charged with an offence under a statutory instrument, it is a defence to assert that the instrument had not brought to the notice of the public.

In Canada, Section 10 of the Statutory Instruments Act, 1985 expressly confers the responsibility for the publication of the Canada Gazette to the Queen's Printer. Every 'statutory instrument' must be published in the Canada Gazette within twenty-three days after copies of it have been "registered" by the Clerk of the Privy Council.[11] Although non-publication does not render a regulation invalid, like the UK statute, it does provide immunity from conviction unless other reasonable steps had been taken to bring it to the attention of those affected.[12]

In the absence of an analogous general statutory mandate, the courts in India have stepped in to fill the vacuum. In the case of *Harla v. State of Rajasthan*[13] the requirement of "reasonable publication" before the operation of a law was read as an element of 'natural justice' which cannot be denied to people:

> Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or at least there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence.

Kitab Mahal Book Depot of the Department of Publications for sale to the public. A proper record of the dates when an issue of the Gazette of India Extraordinary is printed should be kept in the respective Presses, as sometimes it may be necessary to tender evidence in that regard in courts." , http://dop.gov.in/righttoinformation/append2.pdf

[11] Section 11 of the Statutory Instruments Act, 1985, http://www.canlii.org/ca/sta/s-22/sec11.html

[12] *Ibid*

[13] AIR 1951 SC 467, http://openarchive.in/judis/1179.htm, The Court was called upon to consider the validity of the Jaipur Opium Act 1923, a pre-independence statute , which had never been published in any manner and was purportedly brought into force by a resolution passed by the Council of Ministers.

In *B.K. Srinivasan v. State of Karnataka*[14] the Supreme Court extended this reasoning whilst distinguishing Parliamentary legislation from delegated legislation. Parliamentary legislation, according to the Supreme Court was "publicly made", receiving "wide publicity in papers and, now, over the wireless"[15] whereas delegated legislation was "often made unobtrusively in the chambers of a minister, a secretary.. or other official dignitary". The court held:

> It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, *whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication.* (emphasis added)

Although in this instance, the court proceeded to uphold the notification in question (on the grounds that it did not affect the merits of the case, and was hence a "curable defect") these decisions are significant for their emphasis they lay on publication of statutory instruments. Additionally, they also carve out a role for non-state media in supporting the legitimacy of an enactment by publicising it widely.

More recently, in 1998, the Supreme Court revisited these decisions and interpreted the word "publish" to mean that the notification in question must be made known to the public. Printing of the notification alone would not suffice.[16] In its decision, the court quoted approvingly from a 'Legal Glossary', published by the Legislative Department, Ministry of Law, Justice and Company Affairs, Government of India in 1992, which defined "publish" as "to make generally accessible or available; to place before or offer to public; to bring before the public for sale or distribution".

Thus there seems to be a well-articulated judicial thrust towards the publication of laws as a pre-condition to their validity.

3. Decisions of the Higher Judiciary

Article 141 of the Constitution stipulates that the law "declared" by the Supreme Court shall be binding on "all courts within the territory of India" – in effect converting decisions of the Supreme Court into binding law. In stark contrast to the court's views on the importance of publication of statutes, the Supreme Court has never expressed an equal insistence on the publication or dissemination of its own decisions. The rules of several High Courts only entitle the parties to a suit to obtain copies of judgments while

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[14] AIR 1987 SC 1059, http://openarchive.in/judis/8837.htm

[15] Supra n. 13

[16] *Collector of Central Excise v. New Tobacco Co .and others* (1998) 8 SCC 250, http://openarchive.in/judis/13525.htm

restricting third parties' access to them.[17] There is thus no general statutory commitment on the part of the Higher Judiciary to publish its judgments, much less a commitment to publish them online for free.

4. Right to know and the right to information

Until the passage of the Right to Information Act (the "RTI Act") in 2005, the public had only a restricted general avenue to access public information. Under the Indian Evidence Act (the "Evidence Act") public officers in charge of 'public documents'[18] were obliged to provide certified copies of such documents to any person who had the "right to inspect" them.[19] With the passage of the new RTI Act, however, for the first time all "public authorities" in India were statutorily required to actively disseminate to the public certain kinds of information in their custody – for instance, the particulars of the organization, powers and functions of its employees etc – without their being asked for.[20]

Section 4(1)(a) ambitiously envisages the inauguration of an online information access regime in India through its insistence that every public authority "maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated."[21]

Section 4(2) of the Act directs every public authority to constantly endeavour to take steps to provide as much information "*suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."

Further Section 4(4) prescribes that "the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, *available free or at such cost of the medium or the print cost price as may be prescribed*."

'Any persons' in India now enjoy a peremptory right to receive public information unless special grounds for refusal are proved by the Government.

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[17] For instance, Rule 188(128-B)(2) of The Andhra Pradesh Civil Rules Of Practice And Circular Orders, 1990 permits third parties to obtain certified copies of judgments only upon application supported by an affidavit stating reasons why a copy is required.
[18] See Infra
[19] Section 79 of the Indian Evidence Act. 1872
[20] In the UK, the Statutory Instruments Act
[21] Although various states have e-governance projects of their own,

5. Copyright

The Indian Copyright Act declares the Government to be the 'first owner' of a "government work" in the absence of a contrary agreement.[22] A government work is a 'work' which is "made or published by or under the direction or control of (i) the Government or any department of the Government, (ii) any Legislature in India or (iii) any court, tribunal or other judicial authority in India". Similarly, all public undertakings[23] are deemed, in the absence of alternate agreements, to be the first owner of the copyrights in works made or first published by or under their direction or control.[24]

While the Copyright Act confers on owners, the sole right to reproduce works, make copies of them or communicate them to the public, by virtue of Section 52 of this Act, the reproduction or publication of certain types of Government works would not infringe the Government's copyright[25]. The following classes of Government works can thus be reproduced or published by any person as long as they are without alteration[26]:

> (i) any matter which has been published in any Official Gazette except an Act of a Legislature;
>
> (ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;
>
> (iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;
>
> (iv) any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

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[22] Section 17(d) of the Indian Copyright Act

[23] 'Public undertakings' are defined under the act as undertakings owned or controlled by Government; or

Government companies as defined under the Companies Act, 1956; or a body corporate established by or under any Central, Provincial or State Act.

[24] Section 17(dd) of the Indian Copyright Act

[25] Section 52(1)(q)

[26] In a case under the earlier Copyright Act of 1911 which did not contain an equivalent fair dealing stipulation, the Allahabad High Court, relying on a similarly permissive administrative order, upheld the right of the appellant to publish texts of any Act of the Indian legislature. *J.N. Bagga v. State*, AIR 1959 All 492

While the permission granted by this section appears to be well-defined, it has been the subject of some controversy especially in the context of the publication of law reports. In 2001, the Eastern Book Company, publishers of a popular reporter of Supreme Court cases successfully obtained an injunction from the Delhi High Court against Navin Desai, proprietor of a CD series called "Grand Jurix", on the ground that the latter had "slavishly" copied texts of judgments, including headnotes and other marginal notes from the former's publication.[27] Whilst in this instance, the plaintiffs did not contend that they owned the copies of the judgment themselves, in another case with different parties, the Kerala High Court ruled that "the judgments belong to the State, to the Sovereign Republic, to her People. There can be no copyright in them." The High Court then curiously proceeded, on this reasoning, to declare that the plaintiff's publication of the judgments taken "in their entirety" would comprise "original literary works" of which the plaintiffs would be the "first owners". The defendants were thereby injuncted from copying any portion of the judgment including their unmodified bare texts from the plaintiffs.

With due respect to the Hon'ble High Court, I would venture to suggest that while there can be no copyright on "the law of the land" as the High Court fears, the same rule does not apply to *works* which embody that law of the land. The latter clearly and according to the express provisions of the Copyright Act, would qualify as "Government works" and be subject to government ownership. Further, even if the texts of the judgments were not copyrightable as the Hon'ble High Court suggests, the mere republication of the judgment with modifications would not confer on it the status of an "original literary work" authored by the publisher. Had this been the correct legal position, there would be nothing to prevent publishers from, say, republishing epics like the Mahabharata and claiming them to be their own "original" literary works.

Notwithstanding this judgment, the Copyright status of public documents in India is fairly permissive and there has never been an instance where the Government has prosecuted anyone for the infringement of its copyright with respect to these documents. This non-litigiousness of the Government in matters of Copyright is perhaps the strongest guarantor of the freedom to make the law freely accessible.

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[27] *Eastern Book Company V. Navin Desai*, AIR 2001 (Delhi) 185

In this section I offer an overview of how IndianKanoon was born and how it functions.

1. Genesis

Unlike most Free Access to Law projects, IndianKanoon did not begin "as a response to a need for easily accessible legal information, or the result of an academic grant made available for a legal informatics project". Instead its genesis lay in an esoteric computer science doctoral experiment designed by its creator Sushant Sinha who was researching ways in which data could be interrelated automatically. As Sushant revealed during the course of my interview with him (Iyengar, March 2010):

> When I started it was more about curiosity about how these documents link to each other …the idea was not to build a search engine at the time. The idea was just to understand whether we can interrelate this data and see how they link with each other.

To test these interrelations, Sushant began initially by downloading laws and judgments from the Supreme Court website and began conducting "citation analysis" to test if it was possible to "automatically know what laws are interesting, or useless"(Iyengar, March 2010)[28]

To understand how it was possible for Sushant to easily acquire the initial set of judgments and statutes on his site requires a brief digression to map the terrain of online legal information access in India. The National Informatics Centre (NIC), a public sector corporation, is responsible for hosting, maintaining and updating the websites of government bodies across the country. These include, inter alia, the websites of the Union (federal) Government, the various state governments union and state ministries, constitutional bodies such as the Election Commission and the Planning Commission, and regulatory bodies such as the Securities Exchange Board of India (SEBI). These websites typically host a wealth of useful information including, illustratively, the full texts

[28] In this pursuit, and in IndianKanoon's overall trajectory, Sinha's actions recall the efforts of another pair of graduate candidates in computer science from Stanford University whose fascination for mathematical algorithms ultimately led them to develop the Google Search engine. In John Battelle's (2005) acclaimed account of the Google story, Larry Page and Sergey Brin's invention of Google begins with their wholly academic 'curiosity' about how people linked to each other on the web. The PageRank algorithm that they developed, which became the basis of the Google search engine, was inspired from the model of academic citation in which the number of times an article was linked to by unrelated sites signalled its overall importance. Larry Page, like Sushant, informed Battelle "that it had never been his intention to create a search engine-indeed, he and Brin had no idea what useful things the project might turn up." (Battelle, 2005, pp.69-72)

On the internet, the entirely 'accidental' creation of technologies that have the potential to revolutionize culture is almost a cliché.

of applicable legislations, subordinate legislations, administrative rulings, reports, census data, application forms etc. (Iyengar, Februrary 2010)

The NIC has also been commissioned by the judiciary to develop websites for courts at various levels and publish decisions online. As a result, beginning in around the year 2000, the Supreme Court and various high courts have been publishing their decisions on their websites. The full texts of all Supreme Court decisions rendered since 1950 have been made available, which is an invaluable free resource for the public. Most High Court websites however, have not yet made archival material available online. Consequently, on these sites, access remains limited to decisions from the year 2000 onwards. More recently the NIC has begun setting up websites for subordinate courts, although this process is still at a very embryonic stage. (Iyengar, Februrary 2010)

Apart from free government websites, a handful of commercial enterprises have been providing online access to legal materials. Among them, two deserve special mention. SCCOnline - a product of one of the leading law report publishers in India - provides access to the full texts of decisions of the Indian Supreme Court. The CD version of SCCOnline sells for about INR 70,000 (about US$1,500), which is around the same price the company charges for a full set of print volumes of its reporter. For an additional charge, the company offers updates to the database. The other major commercial venture in the field is Manupatra, which offers access to the full text of decisions of various courts and tribunals as well as the texts of legislation. Access is provided for a basic charge of about US$100, plus a charge of about US$1 per document downloaded. While seemingly modest by international standards, these charges are unaffordable by large sections of the legal profession and the lay public. (Iyengar, Februrary 2010)

Returning to the narrative of IndianKanoon, Sushant's initial indeterminacy of what to do with the vast data he had accumulated was quickly overcome. After informal consultations with friends, he decided to package his data with a search engine and offer it online for public consumption. The immediate excuse for hosting this material on his own website was the shoddy interface of the government websites which made these decisions available. As Sushant was to write in one of his later blog entries

> [I]t was too difficult to look for anything on these websites and so I started building tool sets to play with law data. At a certain point I felt that integration of these small software pieces will be very interesting. I was still skeptic as to whether search on law documents meant anything to common people who do not know the law jargon. In any case I integrated the tool sets into a search engine and got pleasantly surprised when many of my common queries were well answered. (Sinha, 2009, Indian Kanoon - The road so far and the road ahead)

Without any investors backing him, he had to rely on his personal finances to fund the project. This however proved to be relatively inexpensive. In his words:

> (…) starting an internet company is cheap, almost anyone can afford it. … The first thing I did was bought a few hosting servers. .. I bought a machine from Silicon mechanics—a server which was roughly $1200, it had 4 GBS of RAM, it had an ICPU, and I put that in a data centre in Michigan. That costs me 50$/month. (Iyengar, 2010)

To run his servers, Sushant made extensive use of Free and Open Source Software – especially the Postgres database which proved ideal for his project on account its inbuilt search functionality, inverted index and ranking functions. Where the available free software proved inadequate, Sushant innovated and even contributed his patches back to the community to aid the growth of the software. His efforts led to an improvement in the 'headline citation' functionality of the Postgres database which facilitates the retrieval of contextual information associated with search queries.

Reflecting on the process, Sushant is very modest in his acknowledgement of the wealth of software and data he has been able to draw on. "While it may seem like a Herculian task", he says, "it's actually not that bad. There is a lot of stuff already out there, you just need to pick up the pieces and combine together and move on." (Iyengar, March 2010)

2. Launch, Consolidation and Expansion

Once the hardware and the software were in place, IndianKanoon was publicly announced on the 4th of January, 2008 and began by offering access to Indian Supreme Court cases and the texts of Central (Federal) legislations. Between the origins of IndianKanoon in an academic almost mathematical experiment, and its launch in January 2008, Sushant had begun to develop a nascent vision about the project he was undertaking. In a blog post on January 4th 2008 that accompanied the launch of the site, he wrote:

> [A] significant fraction of the population is completely ignorant of their rights and privileges. As a result, common people are afraid of going to police and rarely go to court to seek justice. People continue to live under fear of unknown laws…While it is commendable to make law documents available to common people, it is still quite difficult for common people to easily find the required information…Finding most applicable sections from hundreds of pages of law documents is too daunting for common people. Secondly, laws are often vague and one needs to see how they have been interpreted by the judicial courts…n order to remove the above two structural problems, Indian Kanoon is started. It achieves them by breaking law documents into smallest possible clause and by integrating law/statutes with court judgments. A tight integration of court judgments with laws allows automatic determination of the most relevant clauses and court judgments. (Sinha, 2008, Starting indiankanoon.org)

So right from its inception, the primary target audience for the site has been the layperson as opposed to the legal community. "In my mind it is clear that my target audience is not lawyers… My target audience is really people looking for information,

and how to get them easier". He concedes however that a significant majority of his visitors nevertheless tend to be lawyers. Related to this mission – to reach 'common people' - I think is his decision to offer his data for *free* on his site. As he said in the course of an interview:

> I just don't think that this can ever be paid. It just destroys the fact. If the objective is to allow people to access more information, putting another paid toll isn't going to help anyone. It's not going to help me, or you.

Keeping the content free is also a means for him to avoid assuming the responsibility of accuracy. This is something Sushant is mindful of when he acknowledges that most of his content is "not 100% correct" and this would have been an issue had he solicited subscriptions for his service. (Iyengar, March 2010)

The responses to his site's launch were warm and immediate. As one initial visitor to the site, 'Mangesh' wrote four days after the launch:.

> The site works very well and I can see it being tremendously useful to almost everybody. I especially like how easy it is to navigate between laws, judgments and citations and also how fast and relevant searches are! (2008, January 8, Email responses on Jan 4)

Not content with only hosting the Supreme Court's decisions, by November 2008 Sushant had greatly expanded his site's offerings to include the judgments of 22 High Courts and 17 Tribunals. A major addition during this period was the inclusion of Constituent Assembly Debates which posed a significant challenge. Although the entire text of the debates are available on the government website, they are organized in chronological order with no facility to search through them. Further, the version available on the website did not contain page numbers which posed a serious problem since many judgments would refer to these debates by citing specific page numbers from authoritative versions. When his attempts to circumvent this problem by using the version available through Google Books went in vain (even though the material was out of Copyright, when contacted, Google insisted on taking a conservative approach and refused to release the material in the public domain), Sushant was left with no option but to borrow the books and manually match the page numbers to the text.

Three interesting features were added to the site in this period: A hugely popular forum in which one encounters a gaggle of voices from lawyers seeking citations to laypersons searching for legal advice. Another innovative addition to the site was the inclusion of links to posts or other writings on the internet which referred to cases. A third and quite inspired addition was the inclusion of crosslinks within the judgments to any cases the decision referred to. Taken together, these innovations significantly enhance the users experience of accessing the law.

In the two years since IndianKanoon's launch, the site has grown rapidly – both in its user base as well as in content. Today the site hosts over 1.2 million documents

including the full texts of cases from the Supreme Court, 25 High Courts, 17 Tribunals, the text of the Constitutent Assembly debates, Law Commission reports and the full texts of most Central legislations. The public response to the site has been rapturous, as evidenced both by the feedback he receives as well as in the number of visitors to the site. For instance, in just six months between January 2010 and July 2010, the number of visitors (unique IP hits) per month to IndianKanoon *doubled* from 102,853 to 217,820.

An interesting feature of IndianKanoon's growth has been Sushant's growing articulation of the importance of the task he has been engaged in. This has been due, in part, to the increasing publicity his site has been receiving – especially over the past year - which has created occasions for him to publicly reflect on his actions. In January 2009, he was interviewed by Kishore Budha (2009) from the website Subaltern Media in which he reiterated his commitment to providing legal information that was accessible to the layperson. A personal example he gives to illustrate this in the course of this interview is fascinating as an indicator of the extent of comfort with legal materials that this completely uninitiated computer doctoral student was able to attain in a short period:

> I myself do not know much of law but with the help of Indian Kanoon I have been able to quickly verify facts and satisfy my legal doubts. For example, the other day I read in the newspaper that "non-competition clauses" in employment contract has termed to be illegal. So I went to Indian Kanoon and searched for "non competition in employment" and found out a whole set of judgements in which courts have stuck down non competition clause. There were various variants of non compete clauses like "no solicitation clauses" and it was quite interesting to read these judgements.

A second milestone in Sushant's articulation of his site's mission was a letter he drafted to the Allahabad High Court in April 2009. The Court's website employed a technical restriction called 'captcha' which impeded easy downloading of judgments. Sushant's letter to the Court is interesting both as an illustration of his growing self-assuredness with the law as well as its more complex articulation of the importance of sites like his. On the former point, he begins by justifying his 'crawling' the court's site by citing copyright law: "Since court judgments do not have copyright protection, Indian Kanoon does not violate any copyright law". He then proceeds to offer a catalogue of justifications for why his site is important. Amongst them, he contends that

> Indian Kanoon fills in many voids which exist in current Indian court websites. Restricting access to judgments also forces people to stay with the court websites and force them to not use the law search tools provided by other providers like Indian Kanoon. If such restrictions are removed, people can choose whichever website they like most. (Sinha, 2010, Letter to Allahabad High Court)

In other words, IndianKanoon not only provided a vital public service, it enhanced the public's freedoms by increasing the scope of their choices. Further down in the letter, Sushant objects to the Court's use of the 'captcha' technology on the ground that it restricts persons with disabilities from accessing the law easily.

> image captchas cannot be solved by many people who are blind, old age or do not have a perfect eye. While there are tools (like text to speech) that allow such people to get information available on Internet, there are no tools available for solving image captchas. Therefore, image captchas on allahabad high court restrict access to court judgments to an important class of Indian population. (Sinha, 2010, Letter to Allahabad High Court)

One can see in this last passage the degree to which the language of access, rights and discrimination – native to lawyers and the legal fraternity - has infiltrated Sushant's thought. IndianKanoon, by negative inference, has evolved from being a site designed to test interrelations of data, to one that enables persons with disability to access the law more easily. This is an aspect I will return to in the next chapter of this paper.

One of the major challenges that has accompanied IndianKanoon's fame has been the issue of privacy and anonymisation. Over the past two years, most of IndianKanoon's data including the text of judgments has been indexed by Google and other major search engines. Along with increasing visibility for the website as a whole, this has also unexpectedly resulted in the increasing exposure of parties to cases. Where hitherto, knowledge of parties involved in a case was confined to those with physical access to law reports, the internet has extended the reach of this knowledge to anyone with a browser. While IndianKanoon does not host any documents that are otherwise publicly inaccessible, it has exponentially increased the likelihood that any person's implication in the law – either as a party , a victim or a witness – will be easily discovered. More than an abstract possibility, this has been an issue that Sushant has been confronted with repeatedly. A letter posted on the website's forum by an embittered victim of a lawsuit illustrates the kind of anxieties that this new hyper-visibility creates:

> I was one of the victims of a case for which the judgement is on your website. Even though we were exonerated and the case dismissed as baseless, my name does appear on your website against it on "googling" or searching. Is it possible to mask the name so that it does not appear on the search? or better still take the judgement off from the website since it is now quite old (around 5 years)?
>
> This is causing a huge reputational damage for me even though I had nothing to do with the case.

In addition to posts of this nature on his forum, Sushant has also been hassled by callers who are able to obtain his number from the Internet Whois database which maintains the records of site owners' contact details. Ironically he is a victim of the same heightened transparency that his complainants wish to avoid.

The issue is, however, complex - in addition to complaints of this nature, one also encounters posts which animate its flip side – for instance, an anonymous post by a 52 year old housewife who used IndianKanoon to locate criminal cases against her

husband who was allegedly a conman. (Anonymous., 2010, Access to court cases and judgements).

In March 2010, an unsuccessful writ petition was filed against IndianKanoon in the Andhra Pradesh High Court by a person seeking anonymisation of their personal information. Although the case was eventually dismissed by the High Court on grounds of non-prosecution, the issue remains open.

Sushant's attitude towards the issue has been to uniformly refuse requests for anonymisation unless accompanied to by an order of a court. In a blog post dated 13th of November 2009, he wrote "As court judgments constitute public records, removing them from the website was out of question.". He does however concede, with reservations, the possibility of hiding some of these records from being indexed by search engines, and supports anonymization in cases of sexual offences. However, he is steadfast in his insistence that he has "no obligation to anonymise this data". (Iyengar, March 2010)

3. Past Perfect, Future Tense?

For all its successes, IndianKanoon today remains a single-member enterprise, with seemingly no assurance of continuity other than Sushant's own continued interest and energies. With no "Board" to provide 'adult' supervision and guidance, and no staff to attend to the daily maintenance and support, IndianKanoon seems a rather thin enterprise. So far, however, this has not stood in the way of the site's prodigious expansion during its short existence.

When asked about whether he had any systematic methods of self-appraisal and evaluation, Sushant said there were none. However he is extremely sensitive to the demands and expectations of his users. One of his primary methods of self-appraisal has been to manually pore over query logs – the logs of what search terms people have used – to discover how people search and to use this knowledge to better his service. For instance, he found users regularly keying in "Latest judgments of the Supreme Court" into the search field. He responded by adding a feature to the website that enabled users to chronologically 'Browse' decisions of courts rather than search for them. His analysis of query logs also forms the basis of one the major projects he is currently working on for the site – translating natural language queries into machine readable queries. This stems from his experience of users who frequently misspell the names of cases and end up frustrated in their searches.

The provision of a forum on his site helps him keep abreast of users' demands and expectations and serves as an important channel for him to engage with his audience. He admits to taking complaints and suggestions very seriously on his site and is regular in keeping his site's visitors updated about developments and changes on his website. Although fairly informal, he regards this as one of the modes by which he is accountable to his site's visitors. When asked if he considered himself accountable to his users he replied that although he didn't want to "set it in stone, that I am accountable to people.", he did intend to "provide undisrupted service". "I want to keep everything free", he says,

"…anything that common people will use will remain free,. So, of course, I think it is accountable in the sense that IK search functionality, document access, that will never be barred." To back his commitment with more than words, he has also recently acquired a back-up server to ensure continued service in the eventuality of a hardware failure in his primary server. (Iyengar, March 2010).

While most of the decisions he takes on his site's development tend to be ad-hoc, he does have a rough idea of how he would like the site to progress. For instance, as at this writing he had just completed an extensive overhaul of the internal functioning of the system which improved the quality of results the system could generate. Another major project he intends to undertake is to revamp and update the text of statutes on his site. So although he doesn't follow the dictates of an annual plan, the site has nevertheless progressed one task at a time.

While Sushant currently bears the entire expense of the site on his own, he aims to find a way to make the site sustainable before the end of the year. One of the ways he aims to achieve this is by introducing an automated workflow tool for lawyers which would be a paid feature on his site. However, he isn't to concerned about the sustainability of the project. In his words "Even if its not able to sustain me, there is always a job to do – that's not the end of the world."

4. User Surveys

In this section, I analyse the feedback received in the course of interviews with various users. As mentioned previously, a set of fifteen interviews were conducted amongst three sets of users – Lawyers, Law Students and Legal Academics in order to gain both a general insight into their legal research habits, as well as specifically interrogate their use of IndianKanoon. From the various responses received it seems clear that a clear move towards online, digitized legal research is afoot. There appears to be a firm conviction amongst most of the respondents that conducting online legal research saves them time at the very least and enhances their capacity to work. Further, the responses to IndianKanoon was overwhelmingly positive and most users reported a high degree of satisfaction for the services they obtained on the site.

In the sections that follow, I offer a more disaggregated account of the responses received. The names of individual respondents have been anonymised, although the Appendix to this paper offers a rough contextual sketch of each respondent.

a. ICT usage and Internet research

All users surveyed uniformly reported high degrees of familiarity with and routine usage of both mobile phones and PCs in the course of their work. While the use of mobile phones to access the internet has not yet caught on in a big way, one of the respondents LawyerD reported owning a Kindle e-reader, and makes extensive use in court of the internet facilities on his 3G mobile phone. Although this is far from typical, it does foreshadow the kinds of user-bases that one could encounter in the near future.

Both primary and secondary users felt that they had reasonably good and affordable access to broadband internet at their workplaces/universities. In addition, nearly all primary users, barring one, and all secondary users had regular access to the internet at their residences and were reasonably satisfied with both the quality and cost of their internet access.

Rural – Urban Access Contrasts

LawStudentF studies at one of the top law schools in the country. He owns a laptop and makes regular use of computers and mobile phones. The university charges him around Rs. 8000 (USD 175 approx) per annum for "low-bandwidth LAN internet (15-20 KBps u/d)":. He typically conducts legal research at least once a week to fulfil course requirements like "making projects and case-law, journal articles; and extra-curricular activity like moot court competitions, editing and writing papers and internships." He prefers to access journal articles from paid databases online such as JSTOR, Manupatra, Westlaw, Indiankanoon, Hein Online, Google Scholar online.

He has been using IndianKanoon since he found about it in the course of an internship in May 2010. He feels that the site has improved his access to case-law which is the feature he uses the most on the site. On comprehensiveness, he feels that IndianKanoon often throws up results that other databases do not. He rates the user-friendliness of IndianKanoon as 'average' and would like to see Headnotes and subject-tagging offered on the site.

LawStudentB on the other hand studies law at a newly created law faculty of a university in a small town in South India. His university offers only the most basic access to the internet in a small computer lab, which is shared by the many thousand students of the university. The law library facilities at the university are still very nascent and not very up-to-date. His university does not subscribe to any legal databases and as such students are left to their devices in researching for their projects or for moot courts. He recently found out about IndianKanoon during the course of an internship when he was asked to compile all the decisions delivered by a particular judge of a high court. IndianKanoon enabled him to swiftly compile the collection. He has been a regular user of IndianKanoon and feels that he has been able to locate anything he required quite easily. He feels IndianKanoon is an important public resource especially for students of his background and feels that it is very important that it be kept free.

b. Legal Research

Whilst all primary users reported that they conducted legal research on a daily basis, most secondary users conducted legal research at least once a week. The primary users surveyed typically conducted legal research associated with the cases they were litigating. Secondary users conducted legal research less frequently for class assignments, term papers or in the course of their internships. Case reporters, statutes, digests and commentaries were amongst the most common sources of information that were mentioned by primary users. Almost all secondary users cited journal articles as being the most important legal source they sought, followed by case laws and statutes.

In most cases, both primary and secondary users had used one more paid legal websites – typically Manupatra.com. In addition, most secondary users, barring one, had access to international legal databases such as Westlaw and JSTOR through their universities. Several of respondents also frequently consulted legal blogs, institutional websites and discussion forums which carry discussions of the latest legal issues, often including scanned copies of the law in point.

With regard to the format of source they preferred – online, electronic or physical – there appeared to be some difference in the two user groups. The primary users surveyed were more eclectic in their choice of sources, preferring to conduct research first online while simultaneously retrieving the printed text and referring to authoritative texts. This is owing, in part, to the necessity lawyers face of citing only well-known law reports in courts. By contrast, amongst law students – the secondary users – there was a clear bias in favour of online sources almost to the exclusion of other sources. One respondent, LawStudentE even rated online sources as being "more important than libraries", and even claimed that she always began her legal research on the internet.

c. Most Significant Changes

All users surveyed agreed that their access to online legal information had significantly augmented their ability to conduct legal research. On this aspect LawStudentE noted that "We now have a much richer legal information environment before – even if you do a google search without referring to an authoritative text, you wind up with something which is usually enough without going to source documents". She felt that the most significant change brought about by IndianKanoon was that it has both cut down her costs as well as enabled her to do far more research tasks than previously possible.

LawyerA who practices in several courts in New Delhi felt that in the past few years through blogs, websites and discussion boards an online legal peer community was gradually taking shape. He felt that by reading the legal problems people were posting on mailing lists and reading different lawyers' discussion of these problems, he has been able to sharpen his legal reasoning in ways that had not been possible before. He considers IndianKaoon's biggest contribution to be the fact that it has enabled him to access a database of cases at his own residence where previously he could only access paid databases from the premises of various court libraries. In this way, he felt, it has saved him enormous time and expense he would otherwise have incurred.

This 'portability' of Indiankanoon is a feature that most of the secondary users surveyed also rated as its most significant contribution. On the importance of IndianKanoon to his legal research, LawStudentD said "Indiankanoon helps me access judgements and bare acts when I am not on my university campus."

Another important contribution to his research that LawyerA attributed to IndianKanoon was that it "added depth" to his research by throwing up uncategorized results.

> Within caselaw IndianKanoon has definitely sadded a certain dimension to my research. On Manupatra, to access a case, you first choose a topic, then choose a subtopic and then search within that sub-topic. In IK, by contrast, you're thinking with the database. This throws up interesting results. For instance, I was recently looking for cases on administrative discretion in the realm of public order on IndianKanoon. In addition to cases on the point, the database threw up other results which, although they were not on fours with the issue, were relevant nonetheless. This is something that I would not have got with other search engines like Manupatra.

Interestingly, LawyerA also claimed to have on several occasions found cases on IndianKanoon which were unavailable on Manupatra. In many instances, he has found cases from High Courts on IndianKanoon and an official case reporter of those courts could not be located in the various court libraries he has access to. "Research on a point is not complete until a search is done on IndianKanoon", he says, indicating the significance of the site to his practice.

LawyerB who practices in the family courts in Bangalore believes that IndianKanoon has entirely overhauled her research methodology.

> IndianKanoon has changed the way I conduct research. Previously, I'd postpone the hard labour of pulling out judgments till last moment. Its a laborious process to manually take down the various reports and search through them and you generally put it off till a point when you know enough about the case and only need to find cases to back up your arguments… Now I begin by looking for authorities on IndianKanoon and then structure arguments around the authorities I find. This gives me more leverage in court…

Likewise, LegaAcademicA felt that his "ability to conduct case law research has improved leaps and bounds" because of IndianKanoon.

In addition, some survey respondents felt that because of its simple interface, IndianKanoon has significantly reshaped the way in which non-lawyers can now access the law. By opening up the legal archive to non-lawyers to play with, it has significantly increased the opportunity that laypersons have of making creative uses and interpretations of legal texts.

d. Quality of Service, User-Friendliness, Comparison with paid databases

The most common feature that users accessed on IndianKanoon was its databases of cases. The uses they made of this data was various. The Primary Users mostly used this data in relation to the cases they were working on. The Secondary users surveyed used the materials on the site for a range of research purposes including project-reports, internships, moots and other papers. An interesting use is being made of the site by LegalAcademicC who is a prominent authority on Intellectual Property and intends to create a curated collection of IP decisions from materials on the site.

Most users surveyed were satisfied overall with the comprehensiveness and timeliness of IndianKanoon. As mentioned before, LawyerA claimed to have found documents on IndianKanoon which were unavailable on rival commercial databases and with respect to which the physical case reports in which they were published were hard to come by. LawStudentF shared this impression, stating emphatically that “The Indiakanoon search engine often brings up results that other database searches do not.”.

Other respondents were however more guarded about their assessment of IndianKanoon’s comprehensiveness. LawStudentC observed “I can't comment on its comprehensiveness since I haven't used it enough to know, but I have not always found cases I was looking for”. Although a heavy user of IndianKanoon herself, LawStudentE felt that she could find more materials on Manupatra, and had also “heard that IndianKanoon was not reliable”.

The Authority of Law

Although initially diffident about their admissibility, LawyerA who practices in the courts in New Delhi began submitting printouts of cases from IndianKanoon to courts after he noticed another lawyer doing the same thing.

While he only resorts to this when he is absolutely unable to obtain a copy from a mainstream publisher, or the court library, he sees scope for the practice catching on.

In his view, trial courts are more open to admitting printouts from sites like IndianKanoon as evidence than high courts which tend to be fussy about the authorities they are willing to receive. In his words, “Even the courts function with a certain degree of trust between the judge and a lawyer who habitually practices in that court. This is a trust that one can leverage to push the boundaries of what the court is prepared to accept”.

When asked to compare their experiences with IndianKanoon against their preferred commercial alternative, most users, almost without any exception found the paid alternatives better for a variety of reasons. LawstudentD preferred the paid database Manupatra “simply because it lets me make more accurate searches, and I get journal citations for cases which is something IndianKanoon doesnt let me do”. To LawyerA, LawyerB and LawyerE the feature in Manupatra which signals whether a case has been overruled by a higher court was the single most important reason they would rate that site higher than IndianKanoon. Lawyer B in addition noted that IndianKanoon lacked State enactments and rules framed under these enactments which was a feature one could access on Manupatra. Apart from these technical reasons, there was also an almost sentimental faith that pegged the value of the paid database higher than its free alternative. LawyerA and LawyerD who are a heavy users of IndianKanoon would nevertheless “round their search on IndianKanoon off by crosschecking if they had missed anything on Manupatra”. This residual faith in Manupatra on account of its professional curatorial features formed the subtext to most users preference of this site over IndianKanoon.

The User-friendliness of IndianKanoon’s interface was a topic that yielded the least consensus amongst the users surveyed. While some users felt that documents were far easier to access in the categorized, hierarchically arranged database Manupatra, others felt that IndianKanoon’s simplicity and speed made it much more user-friendly than any of its paid alternatives. LawyerA, for instance, felt that IndianKanoon’s neat and clean

interface with “Nothing flashing in the screen. No tickers opening up” made it much easier to access. He felt that with the commercial databases, there was “Too much of editor and publisher getting in the way” between the user and the database. By contrast, LawStudentE felt that Manupatra’s categorized, hierarchical layout made it easier and more intuitive to find what she was looking for. This was a feeling echoed by LawyerC who comes from a rural background and only began using computers since 2007.

Again, LegalAcademicB felt that it was precisely IndianKanoon’s simplicity that held out the greatest promise that the site would begin to be appropriated by non-lawyers and generate societal outcomes that exceeded the narrow legal community. LegalAcademicC also wholeheartedly supported the simple no-frills interface of IndianKanoon since he felt it saved him a lot of time compared to the complicated, structured navigation that Manupatra requires.

e. Suggestions for improvements

Most of the suggestions for improvements drew from users’ experiences with paid websites. One of the recurring suggestions particularly from the primary user group was for the inclusion of a feature that indicated whether a particular had been overruled or distinguished by a higher court. LawyerA in addition felt that the inclusion of a section-wise search for case law for each enactment on IndianKanoon, would “render an entire generation of case law digests” otiose.

Some users such as LawStudentE who preferred Manupatra’s hierarchical, subject-wise ordering suggested that IndianKanoon emulate that pattern.

LawStudentF recommended the inclusion of “Headnotes and subject description/tags” while LawStudentC found the formatting of cases on IndianKanoon cumbersome and requested modifications that would make it easier to read and copy judgments of the site.

LegalAcademicC and LawStudentD would like to see more advanced search options on IndianKanoon.

LawyerC who is not comfortable with the English language wished that he could access documents in his native language.

f. Why IndianKanoon must be supported

Without exception, all users agreed that IndianKanoon deserved to be supported. The most frequent reason cited in support of IndianKanoon was the fact that it was offered for free. LawstudentE for instance regards the site “the wikipedia of the Indian legal world in the sense of reducing information asymmetry”. Overwhelmingly, users felt that the legal database *ought* to be free and that until now the access barriers to the law set by publishers of law reports had been too high, but unavoidable.

According to LegalAcademicC, IndianKanoon's biggest success has been its ability to provide a "one-stop legal database for free and to scale". In his view, the site has had an empowering, democratising effect by enabling an entire class of laypersons to enter the law.

The next chapter deals with some the key issues this study is concerned with in the light of the foregoing description of IndianKanoon.

Key Issues

In this chapter, in the light of the foregoing description of IndianKanoon, I offer some provisional reflections on the four questions this study is concerned with viz the impact of external factors on IndianKanoon's success, the practices that have been adopted by IndianKanoon that have been successful and those that have not, the outcomes that are resulting from IndianKanoon and whether they are sufficient to create incentive among target audiences or stakeholders to sustain free law publishing.

From the description of the legal information environment in India that I offered in the second chapter, it seems clear that India has made great strides in creating a favourable policy environment for the spread of legal information. More than an enabling policy environment, however, it is in the Indian Government's everyday practice of opening up legal information on the internet which gives Free Access to Law enthusiasts the greatest cause for optimism. To its credit, the Indian Government has, through agencies at various levels, put up vast amounts of legal information on the internet which makes it possible for people like Sushant Sinha to create derivative works of high utility such as IndianKanoon. As he himself says "I don't know who is asking them [the Government] to do it… I was really surprised to see things like Patna court, all of them getting online now"

1. So what explains this candour on the part of the Government?

Jurgen Habermas describes what he terms as a 'structural transformation of the public sphere' in the late twentieth century wherein deliberative democracies – based on the idea of rationalization of power through the medium of public discussion among private individuals - gradually get replaced by a democracies which are seldom more than a compromise amongst various powerful conflicting interests. In his account, a "refeudalization" of the public sphere occurs where "large organisations strive for political compromises with the state and with one another", excluding the public sphere wherever possible. But, Habermas says, at the same time, "these large organisations must assure themselves of at least plebiscitary support from the mass of the population *through an apparent display of openness*"(emphasis mine). Political compromises have to be legitimized through this process of public communication. By "making proceedings public", thus, the need to nurture a deliberative public sphere based on consensus is avoided. (Habermas, J, 1989)

In the present context, I would contend that we need to be cautious that this candour on the part of the Indian Government is not a disguise for the subverting of democracy through other means. The fact that eight Right to Information Activists have been murdered in India in the previous eight months alone (Balaji, 2010) is a somewhat sombre and sobering reminder that increasing volumes of "free" information does not by itself translate into a more powerful public sphere. In the rush to win the *Publizitat* race –

Habermas' term for 'making proceedings public' – we must take precautions lest we lose the 'public sphere' itself.

While the extraordinary success of IndianKanoon is underwritten in some measure by the generalized conditions of free access to information in India, a large part of this success is also due to Sushant's constant sensitivity to his audience's needs and requirements. Nothing else explains he high volume of traffic – exceeding 200,000 unique hits a month. Innovating constantly to add features and content to his site, he has always been a few steps ahead of his audience. The singularity of this feat is evident from the fact that in the course of many of my surveys, users would be astonished to discover that IndianKanoon is run by a single person, and is *not* the well-staffed organisation they had imagined it to be!

Over time, IndianKanoon has been able to maintain a steady level of service and deliver relevant documents in a timely fashion. This much is clear from the user feedback. The site has undeniably led to positive outcomes for users whether it is saving them time and expense or making them better researchers. Less clearly discernible at this stage however are the "positive societal outcomes" which the project is yielding. However, many users believe this to be only a matter of time. Some like LegalAcademicA and LegalAcademicB already believe IndianKanoon is having this effect in the way it has thrown the legal archive open to the 'irreverent' certainly spurious use by laypersons.

The Methodology Guide to this study suggests that the positive outcomes a project generates would boomerang to herald changes within the project organisation itself, thereby setting in motion a cycle of sustainability. Notwithstanding its many successes the concern for IndianKanoon's sustainability is genuine. As LegalAcademicB put it, somewhat cryptically, precisely because of its extraordinary success, because so many people have come to rely so completely on it, IndianKanoon has a *responsibility* to sustain itself. The costs to the FAL movement would be high were IndianKanoon to fail at this stage. Correspondingly the case for commercial databases would be strengthened by IndianKanoon's failure. The future of IndianKanoon (and the FAL movement in India) depends now on the extent to which Sushant is able to leverage his vast user base to attain a sustainable equilibrium for his site. However, I think all conjectures on IndianKanoon's future (or lack of it) are premature at this stage. This becomes ever more apparent when one considers that "between September 1998 and 2001, Google, one of the planet's most profitable companies did not have a viable plan for making money." (Battelle, 2005, pp.92). It would be a mistake to base predictions of IndianKanoon's sustainability on the somewhat domesticated models of FAL projects in other countries. The appropriate frames in this case, I feel, are those of the successful internet companies – the Googles and the Amazons rather than the LIIs.

In this context, I think a definitive statement about 'sustainability' – one of the central objectives of the study– is going to be difficult to arrive at by looking at IndianKanoon alone. The 'success' of the project in this case – unmistakeable, from the responses received from various users – has only a limited bearing on sustainability, to the extent

that the author of the project, through self-motivation or by being egged on by the warm encouragement of his site's visitors.

On a less serious note, one ought not to discount his continued self-motivation lightly. In a famous book with an eponymous title, the philosopher Jacques Derrida describes a condition called 'Archive Fever' which Sushant shows every sign of suffering from. According to Derrida,

> [Archive Fever] is to burn with a passion. It is never to rest, interminably, from searching for the archive right where it slips away. It is to run after the archive even if there's too much of it. It is to have a compulsive, repetitive and nostalgic desire for the archive, an irrepressible desire to return to the origin, a homesickness, a nostalgia for the return to the most archaic place of absolute commencement. (Derrida, 1996)

If not due to his users' encouragement and support, one can expect IndianKanoon's sustenance to be underwritten by Sushant's Archive Fever!

Finally, it might be productive to widen our understanding of 'sustainability' to include not just the immediate project, but the very notion of FAL itself. IndianKanoon has been instrumental and continues to play a crucial role in engendering and sustaining the *expectation* of Free Access to Law. As greater numbers of users – especially new users - become accustomed to accessing legal material for free online, a powerful demand spiral has begun forming which has the potential to foster the growth of ancillary FAL sites – an *ecology* of FAL projects which are mutually sustaining, rather than one single project. Whether IndianKanoon survives in the long run or not, the site has imbued the expectancy of *free* access to the law with 'sustainability'.

Discussion

To conclude I would like to briefly address a question I raised in my preamble: How does one make sense of one man's resolution to become the free supplier to all the world of 1.2 million documents?

A part of the answer lies in one of Yochai Benkler's insights about the changes wrought by the new "networked information economy" that we inhabit. According to Benkler,

> The belief that it is possible to make something valuable happen in the world, and the practice of actually acting on that belief, represent a qualitative improvement in the condition of individual freedom [because of NIE]. They mark the emergence of new practices of self-directed agency as a lived experience, going beyond mere formal permissibility and theoretical possibility.

I think Sushant's decision to host a free database of legal documents is exemplary of the kind of practices of "self-directed agency" as a lived experience that Benkler speaks of. To that extent, a vibrant "networked information economy" is a vital environmental aid to the FAL movement.

In turn, IndianKanoon also feeds this networked information economy. The free material on this site directly feeds the diversity of materials available on the internet which supplies "a richer basis for individuals to form critical judgments about how to live their lives". Additionally it increases the "range and diversity" of things that individuals can do by themselves thereby representing "a qualitative improvement in the condition of individual freedom."(Benkler, 2007) Thus an important societal outcome of IndianKanoon is its ability to expand the horizon of options available to those who seek information.

One last word on possible avenues of further research. As has been stated previously in this paper, one of the major factors contributing to IndianKanoon's success has been the steady hosting of this material by the government itself on its own websites. A detailed ethnography of the National Informatics Corporation which hosts all these websites would contribute much to our understanding of the true basis of the FreeAccess to Law that we enjoy. If we concede that our primary objective is the sustenance of the concept of Free Access to Law rather than individual projects, it is critical to understand and support government initiatives in this direction.

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